U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CRAIG C. LANE and DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION SERVICE, Temecula, Calif.

Docket No. 97-967; Submitted on the Record;
Issued November 24, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established any partial permanent impairment causally related to his accepted injury of a fractured right foot for which he is entitled to a schedule award.

On May 5, 1991 appellant, then a 30-year-old border patrol agent, sustained an injury to his right foot when a van rolled over his leg and dragged him some distance while he was attempting to apprehend fleeing illegal aliens. Appellant stopped work on that day and returned to work on June 18, 1991. The Office of Workers' Compensation Programs accepted appellant's claim for fracture of the right talus[1] in the foot. On July 24, 1996 appellant filed a claim for a schedule award in relation to his accepted injury. On December 4, 1996 the Office denied appellant's claim for a schedule award on the grounds that the medical evidence established a zero percent permanent impairment in relation to the accepted injury.

The Board has duly reviewed the case record on appeal and finds that appellant has not established any partial permanent impairment causally related to his accepted injury for which he is entitled to a schedule award.

Section 8107 of the Federal Employees' Compensation Act[2] and its implementing regulation[3] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use of specified members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants,

---

[1] The Board notes that *Dorland's Illustrated Medical Dictionary* (25th ed. 1974), p. 1539, defines "talus" as "the highest of the tarsal bones and the one which articulates with the tibia and fibula to form the ankle joint."

[2] 5 U.S.C. § 8107(c).

[3] 20 C.F.R. § 10.304.

good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating losses.[4]

In the present case, appellant submitted a medical report by his attending physician Dr. Robin Caldwell, a Board-certified family practitioner, dated October 9, 1996. Dr. Caldwell diagnosed chronic post-traumatic arthritis of the right foot with mild symptoms that could be treated with medication, chronic low back pain secondary to the accepted employment incident, hypercholesterolemia and obesity. He indicated that appellant sustained pain in his ankle with increased activity, particularly squatting for prolonged periods of time, and that he did not have pain with more normal activities. Dr. Caldwell found minimal tenderness and a full range of motion on examination with no neurovascular conditions. He concluded that appellant had reached maximum medical improvement with respect to this condition and was able to work. In response to the Office's October 3, 1996 letter, the record contains an unsigned form which indicates that appellant sustained pain of mild intensity localized to the anterior talus and navicular, was able to continue his daily activities with some discomfort, had no permanent sensory loss and was otherwise normal. These reports were reviewed by an Office medical adviser who reported that no recommendation was made for any partial permanent impairment rating since none was present.

A review of the forth edition of the A.M.A., *Guides* reveals that Dr. Caldwell did not provide any findings from which any rating of partial permanent impairment could be established. Dr. Caldwell's finding of minimal pain which did not interfere with appellant's daily activities, no neurovascular condition and full range of motion indicates that appellant did not have any ratable partial permanent impairment from his accepted employment injury.[5] Appellant has not established a ratable impairment for which he is entitled to a schedule award.

[4] *Quincy E. Malone*, 31 ECAB 846 (1980).

[5] *See* A.M.A, *Guides* (4th ed. 1993) Tables 62-69, pp. 85-89.

The decision of the Office of Workers' Compensation Programs dated December 4, 1996 is hereby affirmed.

Dated, Washington, D.C.
November 24, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member